IN THE

Supreme Court of the United States

October Term, 1950.

No. 426

CITY OF LOS ANGELES, etc., et al., and FRANK W. BABCOCK, *Petitioners*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., and MAXWELL MILLER, etc., et al., *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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INDEX.

Page

Opinions below 1

Jurisdiction 1

Question presented 2

Statute involved 2

Statement 2

Specification of errors 5

Reasons relied on for the allowance of the writ 6

1. The Decision of the Court of Appeals Renders of Doubtful Validity the Action of 1,000 Cities and Renders Uncertain the Action Which Must Be Taken Before December 31, 1950, by 2,000 More Cities, Is Contrary to Long Established Unanimous Administrative Interpretation and Has Brought Chaos Into the Legal Relationships of Landlords and Tenants Where Rent Control Has Been Terminated or Continued 6

2. The Decision of the Court of Appeals That A City Council's Finding of Fact for Termination or Continuance of Federal Rent Control is a Legislative Act Is In Conflict with the Decisions of This Honorable Court 7

3. The Action of the City Council in Finding the Facts Was Not In Conflict With the Requirements of the Charter of the City of Los Angeles 10

4. The Court of Appeals Misconstrued the Federal Statute As Congress Did Not Intend to Confer Power Upon City Councils to Legislate on Rent Control 11

Page

5. The Statute As Construed By the Court of Appeals Would Be Void As An Unconstitutional Delegation of Legislative Power 14

Conclusion 17

Appendix A—Housing and Rent Act of 1950 18
B—Provisions of Charter of City of Los Angeles 20

TABLE OF AUTHORITIES.

Cases.

Hirabayashi v. United States, 320 U. S. 81 8
Housing Authority of the City of Eureka v. Superior Court, 35 Cal. A. C. 594, 219 Pac. (2d) 457 10
Interstate Commerce Commission v. Goodrich Transit Co., 224 U. S. 194 15
J. W. Hampton Co. v. United States, 276 U. S. 394 .. 15
Kleiber v. City and County of San Francisco, 18 Cal. (2d) 718, 117 Pac. (2d) 657 10
Mutual Film Corporation v. Industrial Commission, 236 U. S. 230 9
Opp Cotton Mills, Inc. v. Administrator, 312 U. S. 126 9
Simpson v. Hite, 36 Adv. Cal. Rep. 61 10
Woods v. Miller, 333 U. S. 138 9

Statutes.

28 U.S.C. 1254 (1) 2
Housing and Rent Act of 1950
Sec. 204 (j) (3) 2, 5, 6, 7
Charter of City of Los Angeles
Sec. 21 2

APPENDIX.

1. Housing and Rent Act of 1950 18

2. Provisions of Charter of the City of Los Angeles

Sec. 21 .....
Sec. 31 20
Sec. 281 20
Sec. 282 20
..... 21

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on November 24, 1950.

OPINIONS BELOW.

The opinion of the District Court and the opinion of the Court of Appeals (R. 65) are not yet reported.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered on November

24, 1950. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

QUESTION PRESENTED.

Where the declared legislative policy of Congress as expressed in the Housing and Rent Act is to relinquish Federal control of rents by June 30, 1951, or sooner, and Congress allows for the actual fulfillment of said policy by providing that the actual time and place of termination or continuance of Federal control shall be contingent upon and determined by a specified finding of fact on the existence or non-existence of a shortage of rental housing in each city by their respective local governing bodies, is the action of such local governing bodies in making such finding of fact the adoption of a legislative Act?

STATUTE INVOLVED.

The pertinent statutory and city charter provisions are set forth in the Appendix.

In summary, the Housing and Rent Act of 1950 provides that city councils may by adoption of resolutions in accordance with local law find the facts as to the existence or non-existence of a shortage in rental housing in their respective cities and upon certification of such resolution to the Housing Expediter rent control in said city is continued or terminated in accordance with said finding. The Los Angeles Charter provides that all legislative action of that City must be by ordinance while other action may be by resolution or order. (§ 21).

STATEMENT.

On July 14, 1950, the City Council of the City of Los Angeles published a notice advising the general public that in accordance with Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, the City council would hold

a public hearing on July 28, 1950, to determine whether or not there existed such a shortage in rental housing accommodations in the City of Los Angeles as to require the continuance of Federal rent control in that city. On July 28, 1950, the City Council held the public hearing in accordance with the previously mentioned notice. On the same day the City Council adopted a resolution in which the Council stated that, as a result of the public hearing held on that day it found that there no longer exists such a shortage in rental housing accommodations as to require rent control in the City of Los Angeles. The resolution was forwarded to Tighe E. Woods as Federal Housing Expediter who received it on August 2, 1950. (R. 63.)

Shortly after the Housing Expediter received the resolution and publically announced he would terminate rent control thereupon, Respondent Miller instituted a suit against the Housing Expediter in the United States District Court for the District of Columbia to enjoin the Housing Expediter from terminating Federal rent control in Los Angeles. He alleged that the Housing Expediter was then threatening to terminate Federal rent control in that City on the basis of the Resolution of the City Council received by him.

With Petitioner City of Los Angeles as an intervening party defendant the suit of Respondent Miller was dismissed by the District Court as a matter of law. The judgment of the District Court was affirmed by the United States Court of Appeals for the District of Columbia Circuit on jurisdictional grounds, specifically that the amount in controversy did not exceed the sum of three thousand dollars. Immediately thereafter Respondent Miller instituted a similar suit in the Municipal Court for the District of Columbia and, with Petitioner City of Los Angeles again as an intervening party defendant, the Municipal Court dismissed the suit on the ground that the action was one against the United States, which had not given its consent to such suit.

Throughout the course of the above-described litigatio temporary restraining orders and stay orders *pendent lite* prevented the Housing Expediter from terminatin Federal rent control in Los Angeles in accordance with th City Council's Resolution. These restraining orders an stay orders were issued on the continued allegations o Respondent Miller that the Housing Expediter the threatened to terminate Federal rent control in Los Angeles and upon the continued assertion by the Housing Expedite to the courts in question that if he were not restrained from doing so he would immediately terminate Federal rent control in Los Angeles in accordance with the aforementioned Resolution of the City Council. This Court refused to issue a stay order upon application therefor by Respondent Miller on October 7, 1950.

Immediately following the dismissal of Respondent Miller's action by the Municipal Court and on October 23, 1950, the latest and final restraining order against him having been dissolved, the Housing Expediter, in a communication to the Los Angeles City Council, advised that body that he would not terminate Federal rent control in that City, on the ground that the required finding of fact made by the City Council as to the availability of rental housing accommodations in the City could not in his opinion be reasonably said to flow from the evidence adduced at the public hearing held by the City Council prior to adoption of the Resolution. (R. **17**). In his communication the Housing Expediter further advised the City Council that he was made aware of the proceedings at the public hearing and the evidence presented thereat through information received from an unidentified "impartial observer" and through a wire recording of the public hearing which had been furnished him by an unidentified source. At the hearing in the District Court Respondent Miller revealed that it was he who had furnished the recording. No request had been made to the City Council by the Expediter for the official record of the public hearing.

Upon the Housing Expediter's announced refusal to terminate rent control in Los Angeles despite his receipt of the aforementioned Resolution of the City Council, Petitioner Babcock instituted this action against Tighe E. Woods, Housing Expediter, in the United States District Court for the District of Columbia, seeking a mandatory injunction which would compel the Housing Expediter to terminate rent control in Los Angeles in accordance with the resolution of the City Council. Petitioner City of Los Angeles and Respondent Miller intervened therein as a party plaintiff and a party defendant respectively. The District Court granted the mandatory injunction. An appeal was taken to the United States Court of Appeals for the District of Columbia Circuit. That Court reversed the judgment of the District Court and ordered the complaint dismissed on the ground that the Los Angeles City Council should have made its finding of fact in the form of an ordinance rather than in the form of a resolution, holding that the language "resolution" in the Housing and Rent Act is not controlling but that the City Council is exercising a legislative power which must be exercised by ordinance.

SPECIFICATION OF ERRORS.

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In reversing the judgment of the District Court and in ordering that the complaint be dismissed.

2. In holding that the fact finding by the City Council of Los Angeles for the purpose of discontinuing Federal rent control in Los Angeles pursuant to Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, was an exercise of legislative power.

REASONS RELIED ON FOR THE ALLOWANCE O THE WRIT.

1. The Decision of the Court of Appeals renders of dou ful validity the action of 1000 cities and renders u certain the action which must be taken before Decemb 31, 1950, by 2000 more cities, is contrary to long esta lished unanimous administrative interpretation a has brought chaos into the legal relationships of lan lords and tenants where rent control has been ter nated or continued.

The United States Court of Appeals for the District Columbia Circuit has decided a question of general impo tance which will directly endanger the validity of acti already taken by local governing bodies in continuing terminating Federal rent control in an estimated 1000 citi throughout the Nation, which have either terminated su controls or continued them until June 30, 1951, by resol tions of their governing bodies adopted for that purpo pursuant to Section 204(j)(3) of the Housing and Rent A of 1947 as amended. Some 2000 other cities have unt December 31, 1950, to make findings of fact continuing terminating rent control. We are informed that the Housi Expediter has never rejected any of the more than 10 resolutions received by him on the ground that they we legislative acts and should be in the form of ordinances an he did not reject the Los Angeles resolution on the groun that it was not in the form of an ordinance. His lett of rejection does not even mention the possible existenc of such a ground for rejection. (R. 14). It is believed t be almost universal that most of the local governing bodie must adopt legislative acts by ordinance and further tha such action by ordinance must usually be published befor it is valid. Not all cities have the referendum provision on ordinances which the Los Angeles charter contains bu the publication requirement is practically universal. An

none of the estimated 1000 resolutions which have been adopted have been published according to the best available information.

Under the decision of the Court of Appeals the continuation or termination of Federal rent control by local governing bodies pursuant to Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, is held to be an exercise of legislative power. Hence if the decision is correct it follows that the action of hundreds of local governing bodies in continuing or terminating Federal rent control by resolution is illegal and void, the result of which is to leave the status of rent control in these cities in doubt and confusion and render chaotic the legal relations between hundreds of thousands of landlords and tenants in these areas. Also, the cities which have not acted in many instances do not have time to comply with the formal requirements for adoption of an ordinance but can adopt resolutions as the latter are not usually surrounded by such formal requirements. With the legal relationships between some 40,000,000 people thus in doubt, the public interest in an early decision is great because the impact of the lower Court's decision is so serious.

2. The decision that a city council's finding of fact for termination or continuance of federal rent control is a legislative act is in conflict with the decisions of this honorable court.

The decision of the Court of Appeals is in conflict with the decisions of this Court referred to below. The Court of Appeals held that when, for the purpose of terminating Federal rent control in the City of Los Angeles pursuant to Section 204(j)(3) of the Housing and Rent Act of 1947 as amended, the City Council of Los Angeles, by resolution, in accordance with local Los Angeles law applicable to resolutions, found as a result of a public hearing that there no longer exists such a shortage in rental housing accomodations as to require rent control in the City of Los Angeles,

the making of such finding was the exercise of legislative power. The court held that, where the Charter of the City of Los Angeles requires the exercise of legislative power by the City Council to be by ordinance, requires that ordinances be published and provides that ordinances shall not become effective for a period of thirty days after publication, during which time they are subject to a petition for referendum, the aforementioned resolution had no legal effect because it was neither published nor held for thirty days pending a possible petition for referendum. The Charter provides that action by the City Council other than the exercise of legislative power may be by resolution or order adopted upon a motion.

Petitioners contend that when, pursuant to the authority delegated to it by the Act, the City Council made its finding of fact as to the shortage of rental housing in Los Angeles the Council was engaging in an administrative or executive act and was not exercising legislative power. The Act expressed the legislative will and policy of Congress that Federal control of rents should be relinquished by June 30, 1951, or sooner, and that the actual time and location of such relinquishment was to be determined by a specified contingency, namely, the finding by a local governing body as a result of a public hearing that there no longer exists in the local area such a shortage in rental housing as to require rent control. Thus legislative power was finally and completely exercised when Congress adopted the Housing and Rent Act and its amendments and all that remained to be done, so far as the instant case is concerned, was the administrative determination as to when a specified factual condition existed which would, through the expressed will of Congress, continue or terminate rent control. The authority to make this administrative determination was vested by Congress, so far as concerns this case, in local governing bodies. In *Hirabayashi* v. *United States*, 320 U. S. 81 at page 104 this Court stated that the essentials of the *legislative* function are preserved when Congress au-

thorizes a statutory command to become operative, upon ascertainment of a basic conclusion of fact by a designated representative of the government. The City Council provisions of the resolution do not terminate rent control, it is the Act of Congress which does the terminating. The adoption of the declared policy by Congress and its definition of the circumstances in which its command is to be effective constitute the performance of the legislative function. *Opp Cotton Mills, Inc.* v. *Administrator*, 312 U. S. 126.

In *Mutual Film Corp.* v. *Industrial Commission*, 236 U. S. 230, this Court repeated a previously recognized principle that legislative power is completely exercised where the law is perfect, final, and decisive in all of its parts, and the discretion given only relates to its execution. The legislative power having been completely exercised by Congress the action of the City Council in making its finding of fact was a mere administrative action which determined the application of the previously expressed policy of Congress.

In *Woods* v. *Miller*, 333 U. S. 138, it was expressly urged upon this Court that the power to terminate Federal rent control locally given to the Housing Expediter—similar to the power given to local governing bodies—is an essential legislative power and that therefore it could not be delegated. The Court refused to adhere to such a theory. Obviously, if the power is not legislative when the Housing Expediter exercises it, it is not legislative when the City Council of Los Angeles exercises it, the power in each case coming from the same source. In *Opp Cotton Mills, Inc.* v. *Administrator*, *supra*, this Court held that the essentials of the legislative function are the determination of the legislative policy and its formulation as a rule of conduct, and that such essentials are preserved when Congress specifies the basic conclusions of fact upon ascertainment of which, from relevant data by a designated administrative agency, it ordains that its statutory command is to be effective.

In every case which has been decided by the Supreme Court of California involving findings of fact by local gov-

erning bodies to initiate or terminate legislative program prescribed by state statutes, that Court had held that such findings or action by local governing bodies is *not* legislative in character. The right of referendum has, therefore, always been denied on such exercise of "local options" by local governing bodies. *Kleiber* v. *City and County of San Francisco*, 18 Cal. (2d) 718, 117 Pac. (2d) 657; *Housing Authority of The City of Eureka* v. *Superior Court*, 35 Cal. A. C. 594, 219 Pac. (2d) 457; *Simpson* v. *Hite*, 36 Adv. Cal. Rep. 61. In the *Housing Authority of The City of Eureka* case, *supra*, the Court said:

> "The Kleiber decision is not limited by the language of the San Francisco charter; in broad terms the court determined the nature of local government's acts. *When the sole basis for a determination is whether a certain 'contingent effect' exists to warrant local application of state legislation, the exercise of that narrow authority is an administrative act and not a legislative one . . .*" (Italics supplied.)

3. The action of the City Council in finding the facts was not in conflict with the requirements of the charter of the City of Los Angeles.

In arriving at the conclusion that the City of Los Angeles should have proceeded by ordinance the Court of Appeals has set up its own definition of a legislative act and then holds that under the Charter of the City of Los Angeles such legislative action must be taken by ordinance.

The Court simply ignored every California decision construing what is legislative action as contemplated by the Charter of the City of Los Angeles and that of other cities, and as to counties, throughout the state. In other words the Court has ignored California "local applicable law" in arriving at its erroneous conclusion that the action to be taken by the City Council must be by ordinance. *Kleiber* v. *City and County of San Francisco; Housing Authority of City of Eureka* v. *Superior Court*, and *Simpson* v. *Hite*, *supra*.

The provision for the exercise of the referendum found in the state constitution and supplemented by local laws has given rise to considerable litigation on the question of what constitutes legislative action subject to referendum. The California case law on the subject has clarified the question to the point that it is clear at least to those familiar with the California procedure that the finding of fact required of City Councils under the Rent Control Act as the basis for termination or continuance of rent control is not legislative in character and the cases just cited in preceding paragraphs so hold. This failure on the part of the Court of Appeals to follow the local rule of decision has resulted in its erroneous conclusion that the act of the Council of the City of Los Angeles is legislative in the sense that under the City Charter the action should have been taken by ordinance. A conclusion clearly at variance with local applicable law as demonstrated by the California decisions just cited interpreting California constitutional and statutory provisions.

4. The Court of Appeals misconstrued the federal statute as Congress did not intend to confer power upon city councils to legislate on rent control.

The Court declares that "Congress intended that the resolution described in this statute be a legislative act." The Court bases this statement apparently on the theory that since the resolution must be adopted by the governing body for the purpose of terminating rent control based upon a finding of fact, the whole of the provision is not merely for a finding of fact but is also for a legislative declaration of local public policy, *and that the statute provides for a clear choice of policy on the part of the local governing body*, thus, reasons the Court, "the discretion to be exercised by that body is a political discretion" and that "the final act is thus a legislative act."

Is it possible that Congress intended to delegate its *legislative* power to local governing bodies on this matter? Is

it possible that the Federal War Emergency Powers
stricting the contractual rights of individuals was intend
by Congress to be placed in the hands of local governi
bodies as a political discretionary matter? Clearly n
What Congress intended, as shown by the legislative h
tory in adopting the statute in question, was to have a f
tual determination at the local level of the necessity
further rent control in individual communities.

The attempt by the Court of Appeals to attach sign
cance to the qualification that the resolution must be "
accordance with applicable local law" as indicating leg
lative character is a *non sequitur*. As the Court its
points out "Congress was enacting a statute applicable
scores of cities, towns and villages and many different pr
cedures, restrictions and terminologies. It intended th
each community should determine by its own local meth
an issue of importance to the community." This is u
doubtedly what Congress had in mind. Whether the acti
to be taken should follow a certain *procedure* establish
by the Federal statute or by such *procedure* as follow
the local law governing councilmanic action was the qu
tion which Congress had in mind and Congress decided
the latter course. Clearly this can give no foundation f
the claim that Congress intended Councilmanic action
be of a legislative character.

Moreover, the idea that legislative action is taken at t
municipal level by ordinance is so well known generally
to be a matter of common knowledge to those familiar wi
government. Surely the law makers, i. e. Congress, a
aware of this fact and if it had been in the mind of Co
gress to invest legislative power in local governmenta
entities under the statute Congress would have used t
word ordinance instead of resolution.

The fallacy in the Court's reasoning is further demo
strated by the Court's holding that if Congress had pr
vided that the finding be made by a local official or body
would have been an "administrative act" and that "i

such a statute the policy of decontrolling rent whenever that factual situation was found would have been adopted and fixed by Congress," but the statute requires that a resolution be adopted by the "governing" body for the purpose of decontrolling rents so the action is therefore legislative.

The Court obviously overlooks the cases legion in number, where either a street superintendent or road commissioner acts in an improvement proceeding or the governing body of the local governmental entity acts in the same matter and both are acting non-legislative. The fact that Congress entrusted the local administration of rent decontrol to the governing body of the municipality instead of to the Mayor or Chief of Police is of no consequence as far as the character of the act involved is concerned. See *J. W. Hampton* v. *United States*, 276 U. S. 394, 407.

Can Congress enact a statute the enforcement or effectiveness of which will depend upon local public policy to be determined by local agencies deriving their sole legislative powers from state government? Such a statute would be a contradiction in terms. If local governmental entities are to determine the matter in accordance with their own local public policy why have a Federal statute at all? But Congress did not attempt to do this. *It* fixed the public policy when *it* provided that local governing bodies could adopt a resolution for the termination of rent control when based on a finding reached as the result of a public hearing "that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village."

It is clear that the Court of Appeals has seized upon "distinctions without a difference" and an entirely erroneous theory in interpreting Congressional intent in arriving at the conclusion that the Council of the City of Los Angeles exercised legislative power in adopting the rent decontrol resolution in question—a conclusion which is not only erroneous but fraught with the gravest consequences if allowed to stand.

5. The statute as construed by the Court of Appeals would be void as an unconstitutional delegation of legislative power.

The Court of Appeals states that "basically rent control is a local function over which the Federal Government has no power. The Federal Rent Control Act is valid only as a war measure. As war conditions receded Congress desired to relinquish federal control."

Apparently the Court holds that Congress in the exercise of its war emergency powers adopted local legislation and then left it up to either Federal officials to voluntarily terminate this local legislation or terminate it by agreement between the Federal Government and the Governors of the several states or by the state legislatures enacting state rent control legislation or finally by local governing bodies. The Court uses the expression "relinquishment."

In the first place war emergency does not create power, at most it furnishes reasonable grounds for exercising power already possessed by Congress. Therefore, rent control is not a local function over which the Federal Government has no power if the Federal Rent Control Act itself is to be held valid. If the Act is valid, what Congress did was to exercise its legislative power vested in it at all times and reasonably invoked because of the war emergency.

What the Court of Appeals is holding is that now Congress has provided that this Federal legislation over a matter of local concern may be amended or repealed by (1) voluntary action by Federal officials (2) cooperative action between the Federal government and the governors of the several states (3) rent control legislation by a state legislature and (4) action by local governing bodies in conformity with the provisions of the Federal statute.

According to the reasoning of the Court of Appeals the Federal legislation in question is to be nullified by administrative authority or by state or municipal legislation. The repeal of a Federal statute by a state legislature or a city

council is indeed a novel idea and is likewise violative of every principle against delegation of legislative power.

A statute will not, if it is possible to do otherwise, be construed in such manner as to be violative of constitutional requirements. Rather it will be construed in harmony therewith. Such construction requires that the statute in question be construed on the basis that rent control was a matter of nationwide necessity and within the power of Congress to regulate. That local conditions vary the need for the exercise of such control and that Congress provided the conditions upon which such legislation should terminate locally; that local governing bodies in acting in accordance with the statute are but instrumentalities of the Federal Government in determining the existence of facts prescribed by Congress as the condition upon which controls should terminate locally; that in so doing they are but establishing the conditions upon which the legislation shall cease to operate; that in making such findings and acting in accordance therewith the local governing body is exercising only at most administrative or executive power.

As said by this honorable court in *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194, 214:

> "The Congress may not delegate its purely legislative power to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress."

And in *J. W. Hampton Co.* v. *United States*, 276 U. S. 394, 407, this Court said:

> "Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future conditions, and it may leave the determination of such time to the decision of an executive, or, as often happens in matters of state legislation, it may be left

> to a popular vote of the residents of a district to be affected by the legislation. While in a sense one may say that such residents are exercising legislative power, it is not an exact statement, because the power has already been exercised legislatively by the body vested with that power under the Constitution, the condition of its legislation going into effect being made dependent by the legislature on the expression of the voters of a certain district. . . ."

This is the true interpretation of the statute and the only one in harmony with constitutional principles and it is respectfully submitted that the Court of Appeals erred in not following it.

CONCLUSION.

For the reasons given above this Petition should be granted and the decision of the Court of Appeals reversed at the earliest possible time.

Respectfully submitted,

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APPENDIX A.

1. Housing and Rent Act of 1950.

[PUBLIC LAW 574—81ST CONGRESS]
[CHAPTER 354—2D SESSION]
[S. 3181]

AN ACT

To extend the Housing and Rent Act of 1947, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Housing and Rent Act of 1950".

SEC. 2. Section 4 (e) of the Housing and Rent Act of 1947, as amended, is hereby amended by striking out "June 30, 1950" and inserting in lieu thereof "June 30, 1951".

SEC. 3. Section 204 (a) of the Housing and Rent Act of 1947, as amended, is hereby amended by striking out "June 30, 1950" and inserting in lieu thereof "June 30, 1951".

SEC. 4. Section 204 (f) of the Housing and Rent Act of 1947, as amended, is hereby amended to read as follows:

"(f) (1) The provisions of this title, except section 204 (a), shall cease to be in effect at the close of December 31, 1950, except that they shall cease to be in effect at the close of June 30, 1951—

"(A) in any incorporated city, town, or village which, at a time when maximum rents under this title are in effect therein, and prior to December 31, 1950, declares (by resolution of its governing body adopted for that purpose, or by popular referendum, in accordance with local law) that a shortage of rental housing accommodations exists which requires the continuance of rent control in such city, town, or village; and

"(B) in any unincorporated locality in a defense-rental area in which one or more incorporated cities, towns, or villages constituting the major portion of the

defense-rental area have made the declaration specified in subparagraph (A) at a time when maximum rents under this title were in effect in such unincorporated locality.

"(2) Any incorporated city, town, or village which makes the declaration specified in paragraph (1) (A) of this subsection shall notify the Housing Expediter in writing of such action promptly after it has been taken.

"(3) Notwithstanding any provision of paragraph (1) of this subsection, the provisions of this title shall cease to be in effect upon the date of a proclamation by the President or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this title is not necessary because of the existence of an emergency, whichever date is the earlier.

"(4) Notwithstanding any provision of paragraph (1) or (3) of this subsection, the provisions of this title and regulations, orders, and requirements thereunder shall be treated as still remaining in force for the purpose of sustaining any proper suit or action with respect to any right or liability incurred prior to the termination date specified in such paragraph."

SEC. 5. Section 204 (j) (3) of the Housing and Rent Act of 1947, as amended, is hereby amended to read as follows:

"(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town, village, or in the unincorporated area of any county upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town, village, or unincorporated area in such county: *Provided*, That where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area."

SEC. 6. Nothing in this Act or in the Housing and Rent Act of 1947, as amended, shall be construed to require any person to offer any housing accommodations for rent.

SEC. 7. If any provision of this Act or the application of such provision to any person or circumstances shall be held invalid, the validity of the remainder of the Act, and the applicability of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 8. This Act shall become effective on the first day of the first calendar month following the month in which it is enacted.

Approved June 23, 1950.

APPENDIX B.

2. Provisions of Charter of the City of Los Angeles.

"SEC. 21. All legislative power of the city except as herein otherwise provided is vested in the Council and shall be exercised by ordinance, subject to the power of veto or approval by the Mayor as herein set forth. Other action of the Council may be by order or resolution, upon motion."

"Sec. 31. All ordinances finally adopted under the provisions of this charter shall be published in the English language by at least one insertion in some daily newspaper printed and published in the City of Los Angeles, or by posting for at least ten days in three public places in said city, and until and without such publication or posting no ordinance shall be valid or take effect."

"Sec. 281. No ordinance, legislative, administrative or executive, passed by the Council shall go into effect until the expiration of thirty days from its publication, except an ordinance ordering, or otherwise relating to an election or to the levying or collection of the annual city taxes; an ordinance establishing or changing the name of, or curb lines of, or respecting the establishment or change of grade of, or the improvement in any manner of, or the opening, widening, straightening or extension of, streets, boulevards, alleys, courts or other public places, and an ordinance respecting the construction of sewers or storm drains, or respecting the bringing or conduct of suits or actions or the levying or collection of local assessments upon private

property for any of said purposes, or respecting the condemnation of lands for parks, boulevards or playgrounds under laws or ordinances providing for the payment of the expense thereof by local assessments upon private property, or any ordinance authorized or required by the laws of this state, or by or under the provisions of this charter, respecting the improvement of streets or other public places; and an ordinance required for the immediate preservation of the public peace, health or safety, which shall contain a specific statement showing its urgency, and is passed by a three-fourths vote of the Council; but all ordinances of any of the classes heretofore excepted by this section shall take effect upon their publication. No grant of any franchise, right or privilege shall ever be construed to be an urgency measure, but all grants of franchises, rights or privileges shall be subject to a referendary vote hereinafter provided. No ordinance, order or resolution passed by the Council making or authorizing any contract shall go into effect until the expiration of thirty days from the publication of such ordinance, or the adoption of such order or resolution, except contracts for street or other public improvements, the cost and expenses whereof are to be paid by local assessments, contracts requiring payment from funds under the control of the Water and Power, or Harbor Departments, and contracts that require the payment by the city of less than twenty-five thousand dollars, and except any ordinance, order or resolution of the Council authorizing the sale or issuance of bonds of the city or of any district therein. Except as hereinbefore provided, orders and resolutions shall take effect upon their passage."

"Sec. 282. At any time within the thirty days mentioned in the preceding section, a petition addressed to the Council, and signed by qualified electors of said city equal in number to at least ten per cent of such qualified electors, computed upon the basis for estimating percentages specified in Section 272 hereof, may be filed with the City Clerk, demanding the submission of any ordinance, order or resolution passed by the Council, to a vote of the qualified electors of said city, except any ordinance, order or resolution which shall take effect upon its publication or passage as provided in the preceding section. Any such petition shall be known as a referendary petition, and shall

contain the ordinance, order or resolution in full, the submission of which to a vote is thereby demanded. Such vote shall be known as a referendary vote.

"The provisions of this charter, relating to the form and to the mode of signing initiative petitions, and to the filing, examination, certification and amendment of the same, and to the presentation thereof to the Council by the City Clerk, shall apply to referendary petitions filed under the charter.

"If any referendary petition or petitions be filed, as hereinbefore provided, and the City Clerk shall be unable to make his certificate to the sufficiency or insufficiency thereof within thirty days after the publication of the ordinance, or the adoption of the order or resolution, the submission of which to a referendary vote is thereby demanded, such ordinance, order or resolution shall be suspended from taking effect after the expiration of said thirty days and until the date of the certificate of the City Clerk to the sufficiency or insufficiency of such petition or petitions. If by the certificate of the City Clerk such petition or petitions are certified to be sufficient, such ordinance, order or resolution shall not go into effect until it shall be adopted by vote of the electors of the city, as hereinafter provided; but if by such certificate, such petition or petitions are certified to be insufficient, such ordinance, order or resolution shall go into effect upon the date of such certificate; provided, however, that no such ordinance, order or resolution shall take effect until the expiration of said thirty days. No referendary petition shall be amended by a supplemental petition filed after the expiration of said thirty days. In case more than one referendary petition be filed in relation to any certain ordinance, order or resolution, all such petitions shall be considered in determining the number of qualified electors, and with the same force and effect as though all the names had been appended to the one petition."

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950

No. 426

CITY OF LOS ANGELES, etc., et al., and FRANK W. BABCOCK, *Petitioners*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., and MAXWELL MILLER, etc., et al., *Respondent*

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT IN BEHALF OF THE MEMBER CITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICI CURIAE.

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INDEX

	Page
Statement	1
The Importance of the Issue Presented	2
Conclusion	5
Appendix	7

IN THE

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STATEMENT.

The petition for certiorari in this case seeks review of a final judgment of the United States Court of Appeals for the District of Columbia Circuit in *Tighe E. Woods, Housing Expediter, Office of the Housing Expediter* v. *Frank W. Babcock and the City of Los Angeles, et al.*, ——— Fed.

(2d) ———, No. 10826 (1950) and *Maxwell Miller* v. *W. Babcock and the City of Los Angeles, et al.*, ——
(2d) ———, No. 10827 (1950), reversing the judgm
the United States District Court for the District
lumbia, the Court of Appeals holding that in adop
rent decontrol "resolution" pursuant to the provisi
Section 204(j)(3) of the Federal Housing and Re
of 1950 the City Council of the City of Los Angele
legislating and should have acted by "ordinance"
than "resolution."

THE IMPORTANCE OF THE ISSUE PRESENT

This brief in support of the Petition for Certiorari
is filed on behalf of the 591 member municipalities
National Institute of Municipal Law Officers and th
lions of local citizens resident therein who are vitali
cerned with the application and interpretation of t
called "local option" provisions of the Housing and
Act of 1947 as amended. On November 29, 1950, th
tional Institute of Municipal Law Officers at its A
Convention in New Orleans adopted the following re
tion:

> "WHEREAS, more than 1000 city councils have
> the purpose of terminating or continuing rent co
> made findings of fact on whether a shortage of r
> housing exists in their city and have incorporated
> findings in resolutions as required by the Housing
> Rent Act of 1950, and
>
> WHEREAS, the United States Court of Appeals fo
> District of Columbia has held that said finding
> legislative Act and should have been made by
> nance rather than resolution, and
>
> WHEREAS, it is the unanimous belief of the Nati
> Institute of Municipal Law Officers that said hol
> is erroneous,
>
> NOW, THEREFORE, BE IT RESOLVED that the Nati
> Institute of Municipal Law Officers file all neces
> briefs in the Supreme Court of the United State
> support of reversal of that part of said decision
> take all other appropriate action."

The decision of the United States Court of Appeals for the District of Columbia Circuit in the instant case is therefore of major importance to thousands of municipalities throughout the United States. According to the Office of the Housing Expediter, it has been estimated that nearly 1,000 cities have already taken affirmative action in making the required findings of fact for extending or decontroling Federal rent controls pursuant to the provisions of the Housing and Rent Act of 1947 as amended. These local communities which have taken affirmative action have acted by "resolution" rather than by "ordinance" as the statute requires a "resolution" adopted in accordance with local law.

The decision in the instant case holding that such action is legislative casts grave doubts on the validity of local action in these communities which have acted by "resolution" rather than by "ordinance", for it is almost universally accepted and provided for in municipal law that legislative acts must be by "ordinance" and must be published before they are valid. It is also believed that none of the resolutions which have been adopted have been published, another usual requirement for such municipal legislative acts. While many cities do not have the referendum provisions involved in the Los Angeles charter interpreted by the Court of Appeals, nearly all cities require publication of ordinances.

Furthermore, the decision in the instant case has created a dilemma for those hundreds of cities and communities which may wish to take some affirmative action between now and December 31, 1950, by resolution to continue Federal rent controls. Not all cities have time to act by ordinance before that date and no attorney for such cities could approve of action by resolution if such action is illegal.

Suffice it to say, the decision in the instant case has created and will create considerable confusion since it is so patently inconsistent with the express language used by the Congress of the United States in adopting the so-called "local option" provisions of the Housing and Rent Act.

For the decision to stand undisturbed would mea
cities adopting resolutions extending Federal contr
yond December 31, 1950, would automatically be
trolled on that date, since the instant decision would
action by ordinance where city charters or applicabl
law requires legislative acts to be by ordinance. I
tion, those communities which have adopted decontro
lutions may discover that their resolutions are voi
Federal controls should have been in effect since th
of the adoption of the resolutions.

Cities are creatures of the states rather than the F
Government and no record is found of any state whi
conferred the power on cities to enact and adopt suc
rent controls. Surely Congress has not intended to
such power upon cities! The only reported cases o
rent control involve attempts by the City of New Y
adopt rent control legislation as local law, and thos
have been held invalid because the City of New
could not suspend or control rights and statutory re
of landlords and tenants conferred by state statutes on
subjects. *Gennis* v. *Milano*, 135 Misc. 209, 237 N. Y.,
(1929). See *Friedlander and Curreri, Rent Con
Federal-State-Municipal* (1948), p. 271, for the cas
validating the recent local laws on the same ground

The quesions presented and problems created by t
cision in the instant case are serious and urgent to
sands of municipalities. It is particularly urgent t
members of the National Institute of Municipal La
ficers which is operated by municipal legal advisor
counsellors who have the responsibility and duty to i
pret and apply the decision of the United States Co
Appeals for the District of Columbia Circuit to local a
which has been or will be taken. Since the decision
is of such national importance and conflicts with
expressed intention of the Congress of the United S
it is respectfully submitted that this Honorable
grant certiorari to review the judgment of the United S
Court of Appeals for the District of Columbia at the ea
possible date.

CONCLUSION.

In view of the importance of the issue presented here to hundreds of municipalities who are vitally interested in whether they have acted illegally in finding the required facts for terminating or continuing rent controls by "resolution" by acting in accordance with the express language of the Housing and Rent Act of 1950, and the importance of the issue to the hundreds of other cities which wish to know the answer to this question before December 31, 1950, so they can take legal action, it is respectfully submitted that the case be reviewed and re-examined by this Court at the earliest possible time.

As in *United States* v. *National City Lines*, 337 U. S. 78, 84, where this Court overruled a claim of Congressional ignorance in the use of the language "any civil action," there is not "the slightest justification for overriding the unequivocable words," of this statute for nowhere in the legislative history or even in the later administrative unanimous and uniform interpretation of the Act is there even the suggestion that in requiring incorporation of the requisite findings in a resolution "adopted for that purpose in accordance with applicable local law" for resolutions, the Congress meant an "ordinance" "adopted for that purpose in accordance with applicable local law" for ordinances. The opinion of Judge Holtzoff of the District Court set forth below as Appendix A herein, is believed to state the law correctly. The decision of the Court of Appeals not only is contrary to the express language of the Act but is contrary to reason and the law as expressed in the decisions of this Court and other Courts throughout

this Nation and should in the public interest be rev
at the earliest time which is possible for proper con
ation by this Honorable Court.

Respectfully submitted,

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City Counselor, Kansas City, Missouri

APPENDIX.

Decision of the United States District Court for the District of Columbia

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IN THE ...NITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4669-50

FRANK W. BABCOCK, *Plaintiff*,
CITY OF LOS ANGELES, et al., *Plaintiffs in Intervention*,

v.

TIGHE E. WOODS, etc., et al., *Defendant*.

Before Judge Alexander Holtzoff.

OPINION OF THE COURT.

THE COURT (orally, after hearing argument of counsel):

"This is a motion to dismiss the complaint in an action brought by a property owner of Los Angeles and in which the City of Los Angeles has intervened as a party plaintiff, to require the Housing Expediter to terminate rent controls in the City and County of Los Angeles in the State of California.

Section 204, subsection (j) (3) of the Housing Act of 1947 (U. S. Code, Title 50 App. Sec. 1894) reads in part as follows:

> "The Housing Expediter shall terminate the provisions of this title in any incorporated city, town or village upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village;" . . .

It appears from the complaint, as well as by a stipulation of facts filed in connection with this motion, that the governing body of the City of Los Angeles, the City Council, held a public hearing after ten days' notice, at which a vote was taken on the question whether rent control should be terminated; that the City Council made the finding referred to in the statute and that it passed a resolution in accordance therewith.

It is claimed, however, that mere compliance with the prerequisites of the statute are not conclusive upon the Expediter, but that he has a right to go behind the findings and the resolution and determine whether the findings are justified by the evidence introduced at the hearing. In this case the Expediter apparently declined to act on the basis of the resolution, because he found that the evidence did not justify the conclusions reached.

In examining the statute it must be noted that it is provided that the Housing Expediter "shall" terminate rent controls, not "may" terminate rent controls, if certain prerequisites are complied with. To be sure, there are occasions on which the word "shall" is construed to mean "may", but there must be a showing why such a construction should be reached. It is the exception rather than the rule. The Expediter no doubt has a right to determine whether there has been a public hearing, whether ten days'

notice has been given, whether a resolution was passed and appropriate findings made, but it seems to the Court that he may not go behind the resolution if the formal steps have been complied with. He may not review the evidence introduced by the City Council or other governing body.

The statute is clear and it hardly seems necessary to have recourse to extrinsic aids to construction which would be helpful if the statute were ambiguous.

It is significant, however, that the Report of the Committee on Banking and Currency of the House of Representatives on this legislation, House Report No. 2116, 81st Congress, 2nd Session, expressly stated:

> " . . . the action of the local governing body in the matter would be final and not subject to review, approval, or change by any other authority."

Previously, and in the same paragraph the report contains the following significant language:

> "The Office of the Housing Expediter is directed to remove rent control from any area where the demand for housing appears to have been reasonably met."

Whether the demand for rental housing appears to have been reasonably met is to be determined, according to the statute, by a resolution of the governing body.

It is also urged that the resolution was not adopted in accordance with applicable local law, in that the requirements of the local law relating to the passage of ordinances were not fulfilled. This resolution, however, is not to be dealt with or considered as a city ordinance, and therefore the requirements applicable to city ordinances will not govern the resolution contemplated by this Act.

In view of these considerations the motion to dismiss the complaint is denied."

November 6, 1950.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 426

CITY OF LOS ANGELES, etc., et al., *Petitioners,*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., *Respondents.*

MOTION FOR EXPEDITIOUS ACTION.

Now comes petitioners herein and respectfully move this Court to require respondents herein to file their brief if they desire to oppose this petition for a writ of certiorari in such time as will enable this Court to consider the granting of said petition on or before December 9, 1950. If the normal period of thirty days is allowed Respondents under Rule 38 (3) of the rules of this Court, the Housing and Rent Act of 1947, as amended, will have expired prior to the time for filing opposing briefs. The Act expires on December 31, 1950. The decision in the case by this Court before that time is urgently needed to end the uncertainty and confusion existing in approximately 3,000 cities throughout the country as the result of the decision of the lower court.

In approximately 1,000 cities Federal rent control has been terminated, or continued to June 30, 1951, by findings of fact incorporated in resolutions of local governing bodies. The decision of the lower court holds that such action is a legislative act and is invalid when done by resolution rather than by ordinance. Approximately 2,000 other cities have not acted and may wish to continue Federal rent control for 6 months beyond December 31, 1950, and these 2,000 cities must make their finding of fact before

the Act expires on December 31, 1950. Many of these cities do not have time to incorporate their findings of fact into an ordinance, and not wishing to act illegally by resolution, they may not be able to get the benefits of the Federal Act at all. It is therefore urgent that this Court finally determine before that date whether those cities which have already acted have done so illegally, and thus allow time for those who can to correct their action, and also allow those cities wishing to extend rent control to June 30, 1951 by resolution to do so.

For these reasons and the reasons set forth in the Petition for a Writ of Certiorari herein it is respectfully urged that the early action here prayed for is essential and in the public interest.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 426.

CITY OF LOS ANGELES, etc., et al., *Petitioners,*

v.

TIGHE E. WOODS, Housing Expediter, etc., et al., *Respondents.*

SUPPLEMENT TO MOTION FOR EXPEDITIOUS ACTION CONTAINING AUTHORITATIVE CONGRESSIONAL INTERPRETATION AND RESPONDENT WOODS' ADMISSION THAT COURT OF APPEALS DECISION IS ERRONEOUS.

In view of the national interest in expeditious action herein, it is believed well to present to the Court the statements of the Congressional authors of the Housing and Rent Act and the admissions of the Respondent, Mr. Tighe E. Woods, and of his General Counsel, Mr. Dupree, that the Court of Appeals of the District of Columbia Circuit committed error in the decision in this case that the word "resolution" adopted in accordance with local law in that Act must be interpreted as "ordinance" adopted in accordance with local law applicable to ordinances.

On November 29, 1950, at the hearing before the Committee on Banking and Currency of the United States Senate, 81st Congress, Second Session on S. J. Resolution 207, during the testimony of Mr. Tighe E. Woods, Housing Expediter, the following discussion took place (pp. 22-24):

"MR. WOODS. . . . A recent appellate court decision has cast serious doubt upon the validity of resolutions for continued control already passed by some 800 various municipalities. In defining the term 'resolution,' the United States Court of Appeals for the District of Columbia, in an opinion dated November 24, 1950, involving a decontrol resolution of the city of Los Angeles, stated:

'Congress intended that the resolution described in this statute be a legislative act.'

It was further stated that the resolution for decontrol—

'requires the exercise of legislative power by the governing body of a city.'

The court made clear that a simple fact-finding or administrative resolution is not sufficient. The municipalities' actions are legislative and must be clothed with all the requirements for passage of an ordinance. In fact, the court stated that the use of the word 'resolution' instead of 'ordinance' in the Federal statute is of no importance. In view of the similarity of language in the 'continued control' and 'decontrol' sections of the act, the question arises whether the communities are not required to act by a legislative process in order to preserve rent control after December 31.

THE CHAIRMAN. What is that again?

MR. WOODS. This is new and very serious.

SENATOR CAPEHART. As a member of the committee that passed that bill you can tell that judge he did not know what he was talking about, as far as my mind was concerned.

MR. WOODS. My mind too, sir.

THE CHAIRMAN. That is true because the congressional debate will clearly show that. As I remember, and it has been a long time ago, we did not go into the

connotation of 'ordinance' or 'resolution' but we went into the question of governing bodies and what laws may govern them because in some sections cities act by resolutions and in other places they act by ordinances, as I remember. Am I wrong?

I cannot figure that one out now.

Mr. Woods. We cannot either.

The Chairman. The Congressional Record might throw some light on this point.

Mr. Woods. We have every reason to believe that the vast majority of the local governing bodies construed the act, as did this agency, to permit them to take action continuing control by simple resolution, as distinguished from legislative acts attended with the formalities of ordinances. These formalities vary from city to city depending upon the language of the particular charter, but they generally provide for notice by publication and lapse of a prescribed period of time after notice before becoming effective to permit referendum action, and so on.

While we cannot state that the view of the Court of Appeals for the District of Columbia will be followed by other courts, still we cannot escape the fact that this decision, being the only court of appeals decision on the subject to date, raises serious question as to the validity of all resolutions, both for continued control and for decontrol.

Senator Bricker. Have you appealed that?

Mr. Woods. It just happened last week, Senator. We do not know as of today—I will let Mr. Dupree tell you.

Mr. Dupree. We cannot appeal it, Senator. We won the case but we did not urge this ground. The court decided it on this ground and we were urging another ground. We won the case so we cannot appeal.

The Chairman. You won a case but you lost the issue. It was the distinct understanding of this committee—and I want this on the record and want somebody to correct me if I am wrong—that the city did not require a definite 'legislative process' or definite type of legislation, according to the words you read here. That is why this committee took a long, long time to write those words in there to authorize action by a

'resolution' as being less restrictive than an ordinance or by such other type of action as the local law may demand.

SENATOR DOUGLAS. I do not want to usurp Senator Tobey's position as the official quoter of classical aphorisms, but would it be appropriate to say that in trying to knock out the Los Angeles decontrol ordinance you were 'hoist with your own petard.'

SENATOR FLANDERS. If I may add to that: 'Tis the sport to have the engineer hoist with his own petard.'

The CHAIRMAN. I am going to take the liberty to ask permission to have printed in the record section 5 of the Housing and Rent Act of 1950, the substance of which says, 'in accordance with applicable local law.' We discussed that in this committee for a long, long time.

(The section referred to follows:)

'SEC. 5. Section 204 (j) (3) of the Housing and Rent Act of 1947, as amended, is hereby amended to read as follows:

'(3) The Housing Expediter shall terminate the provisions of this title in any incorporated city, town, village, or in the unincorporated area of any county upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law and based upon a finding by such governing body reached as the result of a public hearing held after ten days' notice, that there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town, village, or unincorporated area in such county: *Provided*, That where the major portion of a defense-rental area has been decontrolled pursuant to this paragraph (3), the Housing Expediter shall decontrol any unincorporated locality in the remainder of such area.'

SENATOR BRICKER. The term was generally considered as a generic term, whatever the council held, a resolution, ordinance and so on, in accordance with the way they act.

The CHAIRMAN. You remember that very well?

SENATOR BRICKER. Oh, yes, sir.

Mr. DUPREE. Senator, may I say this: As we understand it the court in its opinion made a distinction between a simple resolution which most cities passed—and we know that all they passed was a resolution, which was forwarded to us, and we felt that was all that Congress intended should be necessary. But the court says you didn't mean a resolution, you meant a legislative act which is in the nature of an ordinance. Most cities, if not all, have different standards or formalities for the passage of resolutions as against ordinances. I agree with you, Senator.

The CHAIRMAN. Here is what the law says:

> 'The Housing Expediter shall terminate the provisions of this title in any incorporated city, town, village, or in the unincorporated area of any county upon receipt of a resolution of its governing body adopted for that purpose in accordance with applicable local law.'

That is what the law says.

Mr. DUPREE. I certainly agree with you.

The CHAIRMAN. We took a lot of time on that.

Mr. DUPREE. I know you did and I agree with you.

Mr. WOODS. If I may add, Senator, we O. K.'d almost 400 of these resolutions without question. We just looked to see if they were passed with applicable local law, until this decision which was a surprise to us, too. But it is on the books of the appellate court of the United States.

The CHAIRMAN. Well, this discussion is going to be on the record of the Banking and Currency Committee, for whatever clarifying value it may have.

Mr. WOODS. Communities that have already passed resolutions could examine their actions and, when necessary, adopt resolutions with the necessary formalities of a legislative act. But they do not have the time to do that between now and December 31. Other communities, which planned to act between now and the end of the year upon the belief that only a simple resolution was necessary, may find that they do not have time.

If I may interrupt my statement here: It is not that we wouldn't pass it, but somebody on either side, a landlord or a tenant, with this court decision could

contest it in the courts and the courts would be flooded with a large number of cases."

This public confession of error by the Respondent in the above-entitled case is believed to warrant summary reversal of the decision of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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